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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 536 of 1996

WITH

CRIMINAL APPEAL NO. 882 OF 1996

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMESHBHAI @ RAMABHAI - ORIG. ACCUSED - APPELLANT
Versus
STATE OF GUJARAT - RESPONDENT

Appearance:
1. Criminal Appeal No. 536 of 1996
MR JV JAPEE for the Appellant
MR KP RAVAL, APP for Respondent

2. Criminal Appeal No. 882 of 1996
MR KP RAVAL, APP for Appellant - State
MR JV JAPEE Appointed as amicus curiae

for the Respondent - Accused

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE D.K.TRIVEDI

Date of decision: 18/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI for the Court)

1. The appellant - convict challenges, in Criminal Appeal No. 536 of 1996, the judgement and order dated 3rd July 1996 passed by the learned Additional Sessions Judge, Sabarkantha, at Himmatnagar in Sessions Case No. 21 of 1994 convicting him for the offences under sections 304 Part II, 325, 323 and 452 of the Indian Penal Code, and sentencing him to suffer rigorous imprisonment for a term of five years' and to pay a fine of Rs.300=00, in default to undergo further rigorous imprisonment of six months for the offence under section 304 Part II, and also imposing the sentence for two years' rigorous imprisonment and a fine of Rs.150=00, in default to undergo further rigorous imprisonment for three months for the offence under section 325, and 18 months rigorous imprisonment and a fine of Rs.100=00, in default to undergo two months further rigorous imprisonment for the offence under section 452, and further imposing simple imprisonment for two months and a fine of Rs.50=00, in default to undergo further simple imprisonment for seven days for the offence under section 323 of the Indian Penal Code. All the substantive sentences were ordered to run concurrently.

2. Criminal Appeal No. 882 of 1996 has been preferred by the State against the said judgement and order seeking conviction of the accused under section 302 of the Indian Penal Code for the offence of causing murder of Jivaji.

3. The prosecution version was that, on 19th September 1993, when Jivaji, his wife Naniben and their children were at home, performing religious ceremony in view of the Navaratri festival in village Abhapur of Taluka Vijaynagar, the accused came to their house at about 10.00 p.m. with a stick and started giving wild abuses. He questioned Ramaji, son of the complainant as to why he had gone to his place and started giving him stick blows. When the complainant Naniben tried to

intervene, he gave her a stick blow. Naniben's son Ramaji, who was about 16 years of age at that time, ran out of the house and went into the field having crop of maize. The accused chased him and beat him, but ultimately the boy escaped. The accused thereafter came back to the house of the complainant and gave her stick blows. At that time, when her husband Jivaji tried to intervene, he gave stick blows to him and he fell down. The accused gave a stick blow on his head which ultimately resulted in his death. After assaulting them, the accused ran away. According to the prosecution, the accused had also given a stick blow earlier to his own sister Lasiben, whom he had seen with the complainant's son Ramaji and thereafter, he had gone to the house of the complainant where the aforesaid incident occurred. During the night, the complainant, feeling afraid of being beaten by the accused Ramesh alias Ramabhai again, did not turn out of the house and had sent Manjula to call her son Martaji and other relatives. The injured Jivaji, however, died in the morning at 8 O'clock. Naniben lodged the complaint. According to the prosecution, since the accused was suspecting that the complainant's son Ramaji was having relations with his sister Lasiben and was also friendly with his wife, he had gone to the house of the complainant where the incident occurred, resulting in death of Jivaji.

3. The trial Court, on the basis of the material on record, held that the accused had committed criminal trespass in the house of the complainant on 19th September 1993 at 10 O'clock night, and that he had given stick blows to the complainant's son Ramaji, the complainant and her husband Jivaji, which resulted in death of Jivaji and injuries to others. It was, however, held that, in view of the nature of the weapon used which was a bamboo stick and the nature of the injury caused to Jivaji, there was no intention on the part of the accused to cause his death though he was having knowledge that the injury was likely to cause death. The Court, therefore, convicted the accused for the offence under section 304 Part II of the Indian Penal Code in respect of the culpable homicide of Jivaji. He was also convicted for the offence under section 325 of the IPC in respect of grievous hurt caused to Naniben and for the offence under section 323 of the IPC for the injuries caused to Ramaji.

4. In the appeal against conviction, it was contended by the learned counsel appearing for the convict that the version of the prosecution witnesses was not reliable. According to him, there were

inconsistencies in the version of the complainant as regards the manner in which the offence was committed. She gave different versions about her and her husband's falling down and the chronology in which the blows were given and as regards the intervention by the complainant and her husband when the accused was assaulting Ramaji. The learned counsel also contended that even if it is held by the Court that the injuries were caused by the accused to these persons, the evidence did not disclose that there was any intention on the part of the accused to cause death of Jivaji. He submitted that, even according to the prosecution version, the accused had, after spotting his sister Lasiben with Ramaji in his field, assaulted Lasiben and then proceeded to the house of the complainant, where he questioned him as to why had he gone to his place, and started beating him. This would show that there was no intention on the part of the accused to cause death of Jivaji. It was also submitted that a bamboo stick blow which was given to Jivaji when he tried to intervene might be sufficient to impute knowledge to the accused that the injury was likely to cause death, but it would not impute intention of causing death of Jivaji to the accused.

5. The learned Additional Public Prosecutor on the other hand contended that the accused had acted ferociously and though he had ample time to cool down after having witnessed that his sister Lasiben and Ramaji were together late in the evening at 8.00 p.m. in his field of maize, he had after a lapse of two hours gone to the house of the complainant and started indiscriminatingly assaulting the inmates of the house. He first gave stick blow to Ramaji and when Ramaji ran away, he gave several stick blows to the complainant Naniben and Jivaji and one of the blows which was given on the head of Jivaji, resulted in his death. It was submitted that, in view of these facts, the trial Court was not justified in holding that there was no intention on the part of the accused to cause death of Jivaji. The accused had gone with a determined mind and had inflicted a decisive blow on the head of Jivaji which resulted in fracture of his skull and internal damage in the brain which caused his death. He, therefore, submitted that the accused ought to be convicted for the offence under section 302 of the IPC in respect of the murder of Jivaji.

6. The complainant Naniben, in her deposition exh.8, has stated that she was residing with her husband Jivaji and children in village Abhapur. Amongst her many children, a few from the previous wife of her husband,

there were Ramaji (who was about 16 years of age) and Manjuben. Her son Laxman was staying in Ahmedabad. Her other sons Martaji and Bachubhai were staying in the same village, but separately. According to her, on the day of the incident, at 10 O'clock night, the accused (who was about 21 years of age) had come to their house with a stick. At that time, her son `Ramala' was in the house. The accused questioned Ramala as to why he had gone to his place and on saying so, gave him a stick blow on his back and pulled him out of the house. Her son, however, ran away in the field where crop of maize was standing. After her son ran away, the accused came back to their house and gave a stick blow on her hand. She fell down. When her husband tried to intervene, he gave him stick blow on his head as a result of which he started bleeding from his head. Thereafter, he ran away. Since she was afraid, she did not go out of the house at night. Her daughter Manjula had gone to call her son Martaji. Thereafter, her sons had come. Jivaji was alive, but he was not speaking. Thereafter, village people were called. In the morning, her husband died at 8 O'clock. She went to the police station at Vijaynagar and lodged the FIR exh.9. She has admitted that there was no enmity between the accused and her husband. She was taken for treatment to the civil hospital, at Himmatnagar. In her cross-examination, she has admitted that she and her husband had intervened when the accused had come to their house and was beating her son Ramala. She has however denied that her husband was accidentally injured. She has admitted the suggestion that, in her complaint, she had stated that when her husband was trying to come to her rescue, he was also given a stick blow.

6.1 From her aforesaid narration in the examination and the cross-examination, it was sought to be contended that she had given inconsistent story. We do not find any inconsistency in her version. She has all throughout maintained that the accused had come with a stick and started using abusive language. He entered the house and started assaulting Ramaji with a stick. Ramaji was pulled out of the house but had escaped from him by running away. Thereafter, he came back inside the house and gave her stick blows and when her husband intervened, he gave stick blows to her husband. This entire version is completely corroborated by her FIR exh.9. We do not find any reason to doubt the testimony of Naniben who clearly discloses that the accused had gone with a stick to her house, gave stick blows to her son Ramaji and had also given stick blows to her, causing fracture to her and at the time when Jivaji tried to intervene, he gave stick blows to Jivaji which resulted in the fatal injury

on the head of Jivaji.

7. The witness Ramaji Jivaji, in his deposition exh.10, has stated that he and his sister Manjula were residing with their parents when the incident occurred. He has stated that, at 10 O'clock night, when they were at home and were performing Navaratri puja, the accused Ramesh alias Ramabhai had come to their house and given him two stick blows on his back and pulled him out of the house. He had given him one more stick blow after he was pulled out of the house. As he felt that he would be more severely beaten, he ran away in the field of maize and thereafter, he climbed a hillock. He came back on the next morning when he saw his father was dead. He was told that the accused had given a blow on the head of his father and therefore, he had died. He has deposed that the accused was suspecting that he was having friendly relations with his sister Lasiben and therefore, he had come to beat him. He has stated that he did not have any such relations with Lasiben or with the wife of the accused. In the cross-examination, it was suggested to this witness that he had an affair with Lasiben, sister of the accused, and that the accused had seen them together in the field. He has, however, denied any such incident. He has denied the suggestion that, because his father was believing in the Goddess, during the Navaratri festival, he was hitting himself with chain and that the injury was self-inflicted with the chain. He has denied the suggestion that his father was injured on the head due to such religious ritual. The deposition of Ramaji, who was hardly 16 years of age at the time of the incident, fully supports the prosecution version that he was with his parents and his sister Manjula at their house when the accused came at night at 10 O'clock and gave him stick blows and pulled him out of the house, wherefrom this witness had run away in the field and climbed a hillock to escape further beating. Since he had run away, he could not be expected to see the subsequent incident of the accused going back to their house and giving stick blows to his mother Naniben and his father Jivaji. He was a young boy of about 16 years of age and it was but natural for him to try to escape further beating by running away and his not returning during the night after such an experience was a reaction from which no adverse inference can be drawn against the veracity of the testimony of this witness. One important thing that transpires from his deposition is that, even according to him, the accused was suspecting an affair between him and the sister of the accused - Lasiben.

8. Witness Manjulaben, who was about 14 years of age

at the relevant time and 15 when she deposed at exh.11, has stated that she and her brother Ramaji were residing with their parents at the time of the incident. According to her, they were performing religious rites, because, it was Navaratri festival. At about 10 p.m., the accused Ramabhai came to their house with a stick muddamal article 5. He gave stick blow on the back of Ramaji and pulled him out of the house. Her brother Ramaji, however, escaped and ran away in the maize field. The accused chased him and gave him one more stick blow. Thereafter, she does not know where her brother Ramaji had run away. According to her, the accused then came back to the house and gave stick blows to Naniben causing a fracture on her hand. He had also given stick blows to her father, who started bleeding and had fallen down. Thereafter, the accused had run away from their house. She has stated that she was present in the house when the incident took place. Because they were afraid, they did not go out of the house at night after the incident. In the morning, at 4.00 a.m., she went out to call her brother Bachubhai. At that time, her father was able to move, but was not able to speak. After she informed her brother Martaji, he came to the house. Martaji called their uncle and other relatives. Her father died in the morning at 8 O'clock. She has denied the suggestion in her cross-examination that she had not seen the incident. Her presence in the house was natural and her narration about the incident is consistent with the prosecution version as reflected from the depositions of Naniben and Ramaji. None of these witnesses had any reason to falsely implicate the accused.

9. The version about the injuries caused by the accused to Jivaji, Naniben and Ramaji is fully supported by the medical evidence. Dr.Hansaben Shukla, in her deposition exh.18, has stated that she had examined Naniben and had found these injuries : (1) Swelling on her right wrist joint and right hand, (2) Diffused swelling middle of the scalp and (3) the X-ray shown fracture of lower radius. She had issued certificate exh.19. She has stated that such injuries were possible by muddamal stick article 5.

9.1 Dr. Narendrakumar Pande, in his deposition exh.20, has stated that he had examined Ramaji, who had three injuries, one on his left shoulder and two on his right, which are described in the injury certificate issued by him at exh.21. He has stated that these injuries were possible by muddamal stick article 5. He has then stated that he had examined Lasiben on 28-9/1993 at 2.30 p.m. and had noticed that she was having a

swelling on her head on the right side and was in pain. He has stated that such injury was possible by a hard and blunt substance. He had issued certificate exh.22 in respect of injury to Lasiben. He had also examined Naniben and issued certificate exh.23. He had performed the post-mortem examination of the body of Jivaji and noticed the following injuries which are described in item - 17 of the post-mortem notes.

(1) Oblique C.L.W. 6 cm x 0.5 cm x bone deep, 1 cm lateral to the left eye.

(2) Vertical C.L.W. 2 cm x 0.5 cm x 0.5 cm, 1 cm below the left eye.

(3) Oblique C.L.W. 2 cm x 0.5 cm x 0.5 cm, 3 cm medial to the left ear.

(4) Oblique contusion 10 cm x 2 cm on the body of the left scapula.

All these injuries were possible by a hard and blunt substance as per his opinion. The fractures which corresponded to the head injuries are noted in item-19 of the post-mortem notes. The cause of death was, "Injury to the vital organ brain leading to haemorrhagic shock and death". In his cross-examination, he has stated that the injuries caused to Ramaji and Lasiben were simple injuries. It will be seen that the medical evidence corroborates the version of the eye-witnesses that the accused had caused injuries by giving stick blows to the deceased Jivaji and witnesses Naniben and Ramaji.

10. The panch witness Natavarlal Shah, in his deposition exh.28, has stated that the discovery panchnama exh.14 was drawn in his presence and that the accused had led the panch witnesses to a place from where he had taken out the muddamal stick article 5. He had also taken out the pant and bushirt, which were worn by him at the time of the incident, from his house in the presence of the panchas. He has proved the panchnama exh.14, the contents of which corroborate his version. In view of the blood stains on the muddamal stick, it was sent to the chemical analyzer and as per the report exh.31, the muddamal stick was having blood stains of human origin which as per the serologist's report, was of `O' group which was the group of the blood of the deceased, as was found on the clothes of the deceased, which were also forwarded for analysis of blood appearing

thereon. This is, therefore, an important circumstance which lends assurance to the prosecution version emanating from the ocular evidence. We are, therefore, fully satisfied from the evidence on record that the accused had caused the death of Jivaji by giving him stick blows and had caused grievous hurt to Naniben and hurt to Ramaji by giving them stick blows at the time when the incident had taken place. He had trespassed into the house of the complainant for the purpose of committing these offences.

11. The question, however, remains whether the accused should be convicted for the offence u/s 302 of the Indian Penal Code for having caused murder of Jivaji. The evidence discloses that, before the accused had proceeded to the house of the complainant, he had spotted Ramaji with his sister Lasiben in his field around 8 p.m. and on seeing them, he got agitated and had given a stick blow to his own sister. This fact is borne out from the medical certificate, which is brought on record at exh.22 in which it was certified that an injury : "Pain and tenderness on the right temporal region" was noted on Lasiben and it was opined that this injury seemed to have been caused by a hard and blunt substance. It is obvious that the accused, on seeing Ramaji with his sister Lasiben, lost his self-control and after having given a stick blow to his own sister, went to the house of the complainant. He straightaway question Ramaji as to why had he gone to his place and gave him stick blows on his back. At that time, there was, therefore, no question of his having any intention to cause death of Jivaji. It appears that, after Ramaji escaped from his clutches and ran away and when Naniben and Jivaji tried to intervene, he gave stick blows to them, first to Naniben and then to Jivaji. The stick blow that landed on the head of Jivaji caused his death. It appears that when the accused was arrested, injuries were noticed on his leg. The button of his bushirt was torn alongwith the buttonhole and his pant was also torn. This fact is also borne out from the panchnama exh.42. Since the parents had intervened when their son was being assaulted, there was a clear possibility of a fight having taken place, which fact gets support from the injury noticed on the leg of the accused when he was arrested and from the fact that the clothes which he had produced as the one which he had worn on the day of the incident, were torn. There is therefore, in our opinion, a distinct possibility of a sudden fight having taken place after Ramaji escaped clutches of the accused. If the accused had an intention to finish off Ramaji, he would have continued to pursue him. But after Ramaji escaped, he returned to the house

where this sudden quarrel appears to have taken place because of his having given stick blows to Ramaji and the intervention of the parents due to that.

12. The facts and circumstances which are established in this case do not indicate that the accused had gone to the house of the complainant with an intention to cause death of Jivaji, because, as per the prosecution version, he had initially given abuses and had started beating Ramaji by giving him stick blows on his shoulder. After beating Ramaji, he gave stick blows to Naniben who fell down and when Jivaji tried to intervene, it is at that time that he had inflicted blows to Jivaji, which resulted in his death. The injury on the leg of the accused as noted in the annexure to the chargesheet, which contains the description of the accused when arrested, and the fact that the shirt and the pant which were worn by the accused at the time of the incident were found torn, coupled with the indication in the deposition of the eye-witnesses that the parents had intervened when he tried to beat Ramaji, are all indicative of the fact that there was a sudden fight, and, in a heat of passion, upon a sudden quarrel and without there being any premeditation, the accused caused injuries to Jivaji with a bamboo stick, and the head injury so caused, resulted in his death. The accused had run away after having caused these injuries and does not appear to have acted in any cruel or unusual manner.

13. For the reasons that we have indicated, we uphold the finding of the trial Court that the injury caused to Jivaji was with the knowledge that it was likely to cause death, but without any intention to cause death or to cause such bodily injury as was likely to cause death. The conviction of the accused under section 304 Part II of the Indian Penal Code for causing deat
therefore, upheld and we do not find any reason to interfere with the sentence imposed in respect thereof. The conviction and sentences for the offences under sections 325, 323 and 452 of the Indian Penal Code are also proper and do not call for any interference by this Court.

14. In view of what we have held above, there is no substance either in the appeal against conviction or in the acquittal appeal. Both the appeals are therefore dismissed.

OCTOBER 18, 2001 [R.K.ABICHANDANI, J.]

[D.K.TRIVEDI, J.]

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